

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,

Plaintiff,

vs.

QK HOTEL, LLC, et al.,

Defendants,

and

FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO (USA) CO., LTD.,
et al.,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,
LTD., et al.,

Third-Party Defendants/
Counterclaimants,

vs.

QK HOTEL, LLC, et al.,

Third-Party Counterclaim
Defendants.

AND CONSOLIDATED CASES

CV 04-00124 ACK-BMK

CV 04-00125 ACK-BMK

CV 04-00126 ACK-BMK

CV 04-00127 ACK-BMK

CV 04-00128 ACK-BMK

CONSOLIDATED CASES

DECLARATION OF
ROBERT A. MARKS

DECLARATION OF ROBERT A. MARKS

Pursuant to 28 U.S.C. § 1746, ROBERT A. MARKS states as follows:

1. I am an attorney licensed to practice law before this court.

2. I am counsel for the following defendants in the captioned consolidated actions: Kiahuna Golf Club, LLC, KG Kauai Development, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, QK Hotel, LLC, OR Hotel, LLC, and KG Holdings, LLC.
3. The documents produced by the parties in discovery in this case show a Purchase and Sale Agreement (“PSA”) dated as of January 15, 2002 was signed by the Sports Shinko Hawaii corporations and KG Holdings, LLC. Pursuant to the PSA, the Sports Shinko entities’ Hawaii assets were to be transferred to the designees of KG Holdings, LLC. Most of the properties to be transferred pursuant to the PSA were transferred on January 25, 2002.
4. Attached and marked Exhibit 1 is a certified copy of the Declaration of Keijiro Kimura In Support of Petition to Commence Case Ancillary to Foreign Proceeding Under 11 U.S.C. § 304, filed in In Re Sports Shinko Kabushiki Kaisha, Bankr. D. Hawaii AN 02-04131 on November 25, 2002.
5. Attached and marked Exhibit 2 is a certified copy of the Petition to Commence Case Ancillary to Foreign Proceeding Under 11 U.S.C. § 304, filed in In Re Sports Shinko Kabushiki Kaisha, Bankr. D. Hawaii AN 02-04131 on November 25, 2002.

6. Attached and marked Exhibit 3 is a certified copy of the Order Granting Petition to Commence Case Ancillary to Foreign Proceeding Under 11 U.S.C. § 304, filed in In Re Sports Shinko Kabushiki Kaisha, Bankr. D. Hawaii AN 02-04131 on February 11, 2003.
7. Attached and marked Exhibit 4 is a true and correct copy of pages 1, 6, 7, 11 and 12 of the privilege log prepared by plaintiffs' counsel for the documents produced by Thomas E. Hayes pursuant to subpoena in these consolidated cases.
8. Attached and marked Exhibit 5 is a true and correct copy of Business Information downloaded from the website of the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawaii, showing that Thomas E. Hayes is the registered owner of the trade name Honolulu Professional Services, Ltd., and that Mr. Hayes' mailing address is 99-994 Iwaena Street, Suite C, Aiea, Hawaii 96701.
9. Attached and marked Exhibit 6 is a true and correct copy of a document produced by Thomas E. Hayes pursuant to subpoena in this action, bearing Bates Number T011693 – 964 (produced pursuant to protective order).
10. Attached and marked Exhibit 7 is a true and correct copy of a document produced by Thomas E. Hayes pursuant to subpoena in this action,

- bearing Bates Number T011600 – 601 (produced pursuant to protective order).
11. Attached and marked Exhibit 8 is a true and correct copy of a document produced by Grant Thornton, the auditor and accountant for various Sports Shinko companies, pursuant to subpoena in this action, bearing Bates Number GT033263-65 (produced pursuant to protective order).
 12. Attached and marked exhibits 9A, 9B, and 9C are true and correct copies of excerpts of the Complaints filed in D. Hawaii CV Nos. 04-00125, 04-00126 and 04-00128, respectively, on February 20, 2004.
 13. Attached and marked Exhibit 10 is a true and correct copy of a document produced by Grant Thornton, the auditor and accountant for various Sports Shinko companies, pursuant to subpoena in this action, bearing Bates Number GT033109-111 and GT033114 (produced pursuant to protective order).
 14. Attached and marked Exhibit 11 is a true and correct copy of a document produced by Grant Thornton, the auditor and accountant for various Sports Shinko companies, pursuant to subpoena in this action, bearing Bates Number GT032787 (produced pursuant to protective order).

15. Attached and marked Exhibit 12 is a true and correct copy of a document produced by Thomas E. Hayes pursuant to subpoena in this action, bearing Bates Number T010992 (produced pursuant to protective order).
16. Attached and marked Exhibit 13 is a certified copy of a Complaint filed by Sports Shinko (USA) Co., Ltd., et al., initiating No. 809347 in the Superior Court of the State of California for the County of San Diego, filed on April 18, 2003.
17. Attached and marked Exhibit 14 is excerpts from a certified copy of an Amended Complaint filed by Sports Shinko (USA) Co., Ltd., et al., in No. 809347 in the Superior Court of the State of California for the County of San Diego, filed on February 6, 2004.
18. Attached and marked exhibits 15A, 15B, and 15C are true and correct copies of excerpts of the First Amended Complaints filed in D. Hawaii CV Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128, respectively, on June 14, 2004.
19. Attached and marked exhibit 16 is a true and correct copy of Plaintiff Sports Shinko (USA) Co., Ltd.'s Response to Defendant KG Holdings, LLC's Request for Answers to Interrogatories, Request for Admissions, Request for Production of Documents to Plaintiff Sports Shinko (USA) Co., Ltd., dated November 14, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, November 16, 2006.

/s/ Robert A. Marks
ROBERT A. MARKS